

Reply: Looking for a saviour in international investment law?

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I am grateful to Silvia Steininger for her thought-provoking comments (*[‘From the Margins to the Center – Can Social Movements Save International Investment Law?’](#)*). From the first time I encountered Silvia Steininger and her insightful publications on international investment law (see e.g. [here](#) and [here](#)), I realized she is an impressive researcher who is ready to challenge well-established perspectives and who truly enriches international economic law literature. Thus, I was not surprised that her comments have compelled me to rethink some taken-for-granted issues relating to my article. Since it is impossible to exhaustively address all issues raised in Steininger’s comments in such a short reply, I will briefly address the principal ones.

Steininger’s criticism is that the article is mostly focused on social movements’ activities in the EU, thus overlooking resistance in the Global South. My first instinctive thought was that this is a journal article and the section analysing framing activities cannot thoroughly deal both with civil society groups’ operations in the Global South as well as the Global North. After some thought, I realized that even if I had to consciously choose between social movements operating in the Global North or Global South, I would have very likely chosen social movements operating in the Global North. Although other academic studies that I have prepared address significant issues pertaining to the Global South, why did I choose in this case to illustrate the central thesis by analysing framing activities undertaken by civil society groups mainly in Europe? Like other people, my own perspective (or ‘frame’) in this field is constrained to a significant degree by a sociocultural toolbox, (prominently [language restrictions](#)) and available information (chiefly in digital databases). In practice, the materials on social movements’ framing operations available to me are limited to materials published in English, Hebrew, and Spanish – thus excluding valuable materials published in other languages employed in the Global South. Indeed, after I started studying Spanish (about six years ago), it struck me again that acquiring a new language does not only result in gaining access to more knowledge concerning the contribution of some countries (mainly in Latin America) to international law, but more importantly, in understanding how people in those countries conceive international legal doctrines. Thus, my language constraints and the [ample publications available in English](#) on recent social movements’ framing activities in investment law led me to mainly focus on civil society actors operating primarily in the Global North.

Steininger questions whether “the Western-dominated investment arbitration community [is] less inclined to accommodate anti-investment frames from social movements in the Global South?” I tend to agree with her implicit suggestion that under the current circumstances, social movements based solely in the Global South are less likely to generate a significant change with regard to increasing

application of human rights law in investment law. Notably, such civil society groups often do not command the economic and non-economic resources needed to generate a substantial change in the Western-dominated investment arbitration community. Policy-makers in influential Global North actors (like the EU) are often more susceptible to socio-political pressure exerted by their local constituencies. In many cases, however, social movements based in the Global South can join forces with those based in the Global North, and together level enhanced pressure to promote the application of human rights norms in international investment law.

Steininger argues that social movements based in the Global North ‘do not represent nor speak for those communities’ in the Global South, and doubts whether such civil society groups, which are oriented towards human rights in the Global North, would be able to remedy existing power imbalances in investment law. The article does not raise such arguments; but I agree that civil society groups based in the Global North do not fully represent communities in the Global South. They care (perhaps primarily) about human rights violations committed in the Global North, and they certainly cannot remedy existing power imbalances in international investment law. The more important (and challenging) question in the article is whether social movements based either in the Global South or Global North are likely *to increase* the application of human rights law in investment arbitration. I believe the answer is positive. It is desirable that civil society groups (in both regions) operate to enhance the integration of human rights norms into investment law through modifying well-entrenched frames of investment relations. One option does not exclude the other, and the combined forces of both Southern and Northern civil society groups may well yield better outcomes.

Steininger raises doubts whether the proposed legal strategies to mitigate the *inter partes* frame in investment law can actually be successful in aligning investment arbitration and human rights concerns. As Steininger hints, policy-makers and experts should be aware of the limits of international tribunals (as well as other institutional channels). The legal mechanisms suggested in the article are aimed at mitigating the deeply ingrained frame in the investment arbitration community, and that, in turn, is expected to increase the application of human rights law in investment arbitral jurisprudence. Indeed, such incremental changes are unlikely to fully align investment tribunals’ caselaw and human rights concerns, nor to generate ‘the fundamental political and legal changes in the investment regime desired by the presented social movements’.

Finally, the article’s suggested legal strategies that are likely to increase the application of human rights law but social movements alone are not expected to remedy power imbalances in international investment law. Steininger asks “Can social movements save international investment law?” and my brief answer is that neither social movements (based in the Global South or Global North) nor investment tribunals alone can be expected to ‘save’ international investment law; we should not pin our hopes on a single ‘saviour’ to transform international investment law in this important field. From this perspective, the article’s objectives are rather modest.

